

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

AGREEMENT FOR CONSULTANT SERVICES

This Agreement for Consultant Services ("Agreement") is made by and between the City of Allen, Texas ("City") and Birkhoff, Hendricks & Carter, L.L.P., a Limited Liability Partnership (hereinafter called Consultant);

RECITALS:

WHEREAS, the City desires to engage the services of the Consultant as an independent contractor, and not as an employee, to provide the services described in Exhibit "A" (the "Scope of Services") to assist the City in the interior coating and exterior roof overcoat of the Rowlett Elevated Storage Tank and the interior and exterior coating of the Stacy Ground Reservoir (East) and evaluation of the Stacy Road West Pump Station.

WHEREAS, the Consultant desires to render Consultant services for the City on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in exchange for the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Article I

Term

1.1 This Agreement shall commence on the last date of execution hereof ("Effective Date") and continue until completion of the services, unless sooner terminated as provided herein.

1.2 Either Party may terminate this Agreement by giving thirty (30) days prior written notice to the other Party. In the event of such termination the Consultant shall deliver to City all finished and unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items or materials prepared by the Consultant in connection with this Agreement. Consultant shall be entitled to compensation for any services completed to the reasonable satisfaction of the City in accordance with this Agreement prior to such termination.

Article II

Scope of Service

2.1 The Consultant shall perform the services in connection with the Project as set forth in the Scope of Services outlined in Exhibit "A."

2.2 The Parties acknowledge and agree that any and all opinions provided by the Consultant in connection with the Scope of Services represent the Consultant judgment of the Consultant, in accordance with the Consultant standard of care applicable by law to the services performed hereunder.

Article III

Schedule of Work

The Consultant agrees to complete the required services in accordance with the Project Schedule outlined in the following projected schedule.

Notice to Proceed	September 13, 2016
Complete Site Visit	September 20, 2016
Complete Preliminary Plans and Technical Specifications	October 14, 2016
Receive Comments from City	October 28, 2016
Complete Final Plans and Technical Specifications	November 11, 2016
Advertise Project	November 13, 2016
Receive Bid	November 30, 2016
Stacy Road Pump Station Letter Report	December 1, 2016
Award Contract	December 19, 2016
Notice to Proceed	January 2, 2017
Construction	June 1, 2017

The City requires that the Design Phase of the Scope of Service outlined above be completed within Fifty-Nine (59) calendar days of the signing of the contract. Two weeks for each review is included in the overall completion time. Construction Administration Services will continue for the duration of the Construction Contracts.

Article IV
Compensation and Method of Payment

4.1 Consultant will be compensated in accordance with the payment schedule and amounts set forth in the Scope of Services and outlined below, not to exceed a total amount of One Hundred Four Thousand, Two Hundred Seventy-Four Dollars and Seventy-Five Cents (\$104,274.75).

SUMMARY OF BASIC SERVICES

Rowlett Elevated Storage:

Preparation of Bidding Documents (Lump Sum) \$20,000.00

Stacy Ground Storage Reservoir:

Preparation & Bidding Documents (Lump Sum) \$24,000.00

Subtotal: \$44,000.00

SUMMARY OF ADDITIONAL SERVICES

Bidding (Hourly Salary Cost times 2.4) \$4,000.00

Construction (Hourly Salary Cost times 2.4) \$12,000.00

Quality Control / Henley-Johnston (Expense times 1.15) \$32,274.75

Stacy Pump Station Evaluation (Hourly Salary Cost times 2.4) \$12,000.00

Total Amount for Additional Services: \$60,274.75

TOTAL SERVICES: \$104,274.75

4.2 Unless otherwise provided herein, payment to the Consultant shall be monthly based on the Consultant's monthly progress report and detailed monthly itemized statement for services that shows the names of the Consultant's employees, agents, contractors performing the services, the time worked, the actual services performed, the rates charged for such service, reimbursable expenses, the total amount of fee earned to date and the amount due and payable as of the current statement, in a form reasonably acceptable to the City. Monthly statements shall include authorized non-salary expenses with supporting itemized invoices and documentation. The City shall pay such monthly statements within thirty (30) days after receipt and City verification of the services and expenses unless otherwise provided herein.

4.3 Unless otherwise provided in the Scope of Services the Consultant shall be responsible for all expenses related to the services provided pursuant to this Agreement including, but not limited to, travel, copying and facsimile charges, telephone, internet and email charges.

Article V
Notice to Proceed

Consultant shall not proceed with any work required under this Agreement without a written Notice to Proceed from City. Any work performed or expenses incurred by Consultant prior to Consultant's receipt of a written Notice to Proceed from City shall be entirely at Consultant's own risk. Work performed and expenses incurred after Consultant has received a written Notice to Proceed from City will be eligible for reimbursement under the terms of this Agreement, subject to an approved task order.

Article VI
Suspension of Work

City shall have the right to immediately suspend work by Consultant if City determines in its sole discretion that Consultant has, or will fail to perform, in accordance with this Agreement. In such event, any payments due Consultant shall be suspended until Contractor has taken satisfactory corrective action.

Article VII
Devotion of Time; Personnel; and Equipment

7.1 The Consultant shall devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement. Should the City require additional services not included under this Agreement, the Consultant shall make reasonable effort to provide such additional services within the time schedule without decreasing the effectiveness of the performance of services required under this Agreement, and shall be compensated for such additional services on a time and materials basis, in accordance with Consultant's standard hourly rate schedule, or as otherwise agreed between the Parties.

7.2 To the extent reasonably necessary for the Consultant to perform the services under this Agreement, the Consultant shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Consultant may deem proper to aid or assist in the performance of the services under this Agreement. The Consultant shall provide written notice to and approval from the City prior to engaging services not referenced in the Scope of Services. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Consultant hereunder, and shall not otherwise be reimbursed by the City unless provided differently herein.

7.3 The Consultant shall furnish the facilities, equipment and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

7.4 The Consultant shall submit monthly progress reports and attend progress meetings as may be required by the City from time to time based upon Project demands. Each progress report shall detail the work accomplished and special problems or delays experienced on the Project during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

Article VIII

Miscellaneous

8.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

8.2 Assignment. The Consultant may not assign this Agreement without the prior written consent of City. In the event of an assignment by the Consultant to which the City has consented, the assignee shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

8.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

8.4 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

8.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

8.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

8.7 Independent Contractor. It is understood and agreed by and between the Parties that the Consultant, in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Consultant pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Consultant shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

8.8 Conflicts of Interests. The Contractor represents that no official or employee of City has any direct or indirect pecuniary interest in this Agreement.

8.9 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City:

Attn: Peter H. Vargas
City Manager
City of Allen, Texas
3rd Floor, Allen City Hall
305 Century Parkway
Allen, Texas 75013

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Ross Tower
500 N. Akard Street
Dallas, Texas 75201

If intended for Consultant:

Attn: John W. Birkhoff, P.E.
Managing Partner
Birkhoff, Hendricks & Carter, L.L.P.
11910 Greenville Ave., Suite 600
Dallas, Texas 75243

With a copy to:

8.10 Insurance.

- (a) Consultant shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Consultant's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage; (ii) policy of automobile liability insurance covering any vehicles owned and/or operated by Consultant, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$500,000.00 combined single limit and aggregate for bodily injury and property damage; (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Consultant's employees involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00; and (iv) Consultant Liability covering negligent acts, errors and omissions in the performance of Consultant services with policy limit of not less than \$2,000,000.00 per claim and \$2,000,000.00 in the aggregate.
- (b) All policies of insurance shall be endorsed and contain the following provisions: (1) name the City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance and Consultant Liability; and (2) provide for at least thirty (30) days prior written notice to the City for cancellation of the insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Consultant Liability Insurance. The Consultant shall provide written notice to the City of any material change of or to the insurance required herein.

[Signature Page to Follow]

EXECUTED this _____ day of _____, 20_____.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

ATTEST:

By: _____
Shelley B. George, City Secretary

EXECUTED this _____ day of _____, 20_____.

BIRKHOFF, HENDRICKS & CARTER, L.L.P.

By: _____
Name: John W. Birkhoff, P.E.
Title: Managing Partner

EXHIBIT "A"

Scope of Services

(to be attached)

EXHIBIT “A”
ENGINEERING SERVICES
FOR
2.0-MG ROWLETT ELEVATED STORAGE TANK INTERIOR COATING AND
EXTERIOR ROOF OVERCOAT
AND
3.0-MG STACY ROAD GROUND STORAGE RESERVOIR INTERIOR AND
EXTERIOR COATING

PART 1: PRELIMINARY DESIGN

Provide engineering services to prepare specifications and bidding documents for the interior coating and exterior roof overcoat of the Rowlett Elevated Storage Tank and the interior and exterior coating of the Stacy Ground Storage Reservoir (East).

- 1) Complete topographic surveys at the site to identify current conditions, locate existing fence, locate access, and locate wireless buildings and structures on site.
- 2) Prepare preliminary plan sheet for Rowlett Elevated Storage Tank and Stacy Ground Storage Reservoir.
- 3) Prepare specifications for blasting & coating the interior of the elevated tank. Specifications will include requirement for containment system of blast and paint thru roof openings. Specify dehumidification requirements for the interior blasting and coating system. Also involved will be requirements for exterior roof over-coat based on adhesion test results.
- 4) Prepare specification to remove top coat of paint on the exterior roof of the Rowlett Tank, scarify prime coat and over-coat. Include item to remove all paint in the event topcoats cannot be removed.
- 5) Prepare specifications for blasting and coating the exterior and interior of the Stacy Ground Storage Reservoir. Specifications will include containment and dehumidification requirements for interior blast and coating. Also included is design of center roof vent and inspection port
- 6) Include in design a three-level sample line for the elevated tank.

- 7) Include in specifications and proposal for tank enhancements as determined from site visits to each site.
- 8) The elevated tank will require the following:
 - 1) New interior ladder in the tank bowl
 - 2) New fall protection system on ladders
 - 3) New steel curbs at the access to the tank bowl
 - 4) New 30 inch aluminum hatch at top of dry riser
 - 5) Route radio conductors from access hatch curb to roof plate.
 - 6) Coat steel structure at base of overhead door.
 - 7) Repairs to compression ring on interior of tank.
- 9) Include City provided annual inspection report photographs in specifications.
- 10) Submit four sets of Preliminary Plans (11" x 17" maximum sheet size), and specifications to the City for review. Include in documents proposal requirements of potential painting contractors.
- 11) Meet with the City of Allen to discuss preliminary plans and specifications.

PART 2: FINAL DESIGN

- A. Revise and finalize preliminary plan sheets and specifications, incorporating City comments.
- B. Formulate opinion of probable construction cost based on final plans.
- C. Prepare final bid documents including bid proposal forms, construction plans, specifications and contract documents. Contract documents will be provided by City.
- D. Submit one set of Final Plans (11" x 17" maximum sheet size), Special Conditions and Contract Documents to the City for their use in distributing bidding documents to contractors, suppliers and publishers.

PART 3: ADDITIONAL SERVICES

A. BIDDING PHASE

- 1) Assist the City staff in advertising for proposals. This will include providing City with Notice to Contractors for their use in publicly advertising project. Birkhoff, Hendricks & Carter L.L.P., will e-mail notices to Publishers and to Contractors experienced in large capacity tank paint projects.
- 2) Sell documents to potential proposers, suppliers and other parties.
- 3) Assist City during opening of proposals.
- 4) Check references provided for all bid packages received.
- 5) Review submittal and compile material, and check if requested information was submitted at time of bid.
- 6) Follow-up with each proposer that did not submit full package and request missing data, if allowed by City Purchasing Department.
- 7) Provide spreadsheet to City selection committee of data received and reference comments.
- 8) Assist selection committee in selection process.
- 9) After award of contract, furnish eight sets of prints of the specifications to the City for construction use by the City and Contractor.

B. CONSTRUCTION PHASE

- 1) Attend City's Pre-Construction Conference and coordination meetings with Contractor and City Representatives to discuss strategy, problem areas, progress, and any required coordination.
- 2) Review shop drawings and other submittal information which the Contractor submits. This review is for the benefit of the Owner and covers only general conformance with information given by the Contract Documents. The contractor is to review and stamp their approval on submittals prior to submitting to the Engineer. Review of shop drawing submissions is solely for their conformance with the design intent and conformance with information given in the construction documents. Birkhoff, Hendricks & Carter L.L.P. shall

not be responsible for any aspects of a shop drawing submission that affect or are affected by the means, methods, techniques, sequences and operation of construction, safety precautions and programs incidental thereto, all of which are the Contractors responsibility. Electronic copy of shop drawings in which no exceptions, or make corrections noted are taken by Birkhoff, Hendricks & Carter L.L.P. will be provided to the City. All shop drawings will be completed electronically in PDF format.

- 3) Provide written responses to requests for information or clarification.
- 4) Accompany the City during their final inspection of the project. Climb tank to check completed work.
- 5) Prepare record drawings (11" x 17" paper and .PDF) utilizing City and Contractor construction record information, if requested by the City.

C. QUALITY CONTROL SERVICE:

- 1) Quality Control Services will be provided by Henley-Johnston of Dallas, Texas. Services will include observation and confirmation of surface preparation, monitoring of ambient conditions and the testing of the applied coatings.
- 2) Daily field reports will be prepared for each site visit and will include photographs.
- 3) Rowlett Elevated tank includes a budget for 25 site visits
- 4) Stacy Ground Storage includes a budget for 40 site visits.

D. PUMP STATION EVALUATION:

- 1) Complete hydraulic review of the pump curves for Pumps 1 thru 4 to determine if they are the correct head pump required for the existing and build out system curves.
- 2) Review options to condition the Motor Control Center space. Option includes construction of a wall and ceiling on the existing space, expanding the building to the northeast and reconfiguring the existing office building space to expand the electrical room.
- 3) Determine if and how the existing standby generator can feed Pump 1 thru 4.

- 4) Determine how the existing standby generator switch can be replaced with an automatic switch (non-paralleling)
- 5) Formulate opinions of probable construction cost for various options and each improvement for budgeting purposes.
- 6) Complete site visit if required to confirm space planning.
- 7) Meet with City staff to go over options and costing.
- 8) Prepare letter report of findings and summary of opinions of probable construction costs.

PART 4: EXCLUSIONS

The intent of this scope of services is to include only the services specifically listed herein and none others. Services specifically excluded from this scope of services include, but are not necessarily limited to the following:

- A. Providing an on-site representative.
- B. Fees for permits or advertising.
- C. Certification that work is in accordance with plans and specifications.
- D. Phasing of Contractors work.
- E. On-site safety precautions, programs and responsibility.
- F. Fiduciary responsibility to the City.
- G. Revisions and/or change orders as a result of revisions after completion of original design (unless to correct error on plans).

PART 5: INFORMATION TO BE PROVIDED BY THE CITY

- A. Record drawings of the Stacy Pump Station
- B. Pump curves, model number, serial number, and pump manufacturer name.
- C. Standby generator manufacturer name, generator serial number, and size.
- D. Access to the elevated tank site and access to the Stacy Road Pump Station site.